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IN THE SUPREME COURT OF ILLINOIS

JANUARY TERM, A. D. 1953

No. 32640

VISSERING MERCANTILE CO., THIELE'S DEPARTMENT STORE, F. L. J. BREYMAN, DRY GOODS AND READY-TO-WEAR, TRESSLER'S VARIETY STORE, HORNSBY COMPANY, INC., BACK'S DEPARTMENT STORE, JONES OF PARIS, THE HOW STORE, HART'S DEPARTMENT STORE, BLALOCK'S 5¢-$1 STORE, MANDEL BROTHERS, INC., CHAS. A. STEVENS & CO., THE ILLINOIS FEDERATION OF RETAIL ASSOCIATIONS AND THE CHICAGO RETAIL MERCHANTS ASSOCIATION,

vs. *Plaintiffs-Appellees,*

FRANK ANNUNZIO, DIRECTOR OF LABOR FOR THE DEPARTMENT OF LABOR OF THE STATE OF ILLINOIS, IVAN A. ELLIOTT, ATTORNEY GENERAL OF THE STATE OF ILLINOIS, JOSEPH POIS, DIRECTOR OF FINANCE FOR THE DEPARTMENT OF FINANCE OF THE STATE OF ILLINOIS, BENJAMIN O. COOPER, AUDITOR OF PUBLIC ACCOUNTS OF THE STATE OF ILLINOIS, AND WILLIAM G. STRATTON, TREASURER OF THE STATE OF ILLINOIS, *Defendants-Appellants*

Appeal from the Circuit Court of Sangamon County
Honorable DeWitt S. Crow, Judge Presiding
Trial Court in Chancery No. 112/52

STATEMENT AS TO JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES

In compliance with Rule 12 of the Supreme Court of the United States, the Plaintiffs-Appellees submit herewith

their statement particularly disclosing the basis upon which the Supreme Court of the United States has jurisdiction on appeal to review the judgment of the Supreme Court of Illinois entered in this case that became final on the 16th day of November, 1953.

A petition for appeal is presented to the Supreme Court of Illinois herewith on, to wit, the 9th day of February, 1954.

Jurisdiction

By their complaint for injunction Plaintiffs-Appellees drew in question the validity of a state statute on the ground of its being repugnant to the Fourteenth Amendment to the Constitution of the United States. The judgment of the Supreme Court of Illinois to be reviewed upon this appeal decided in favor of the validity of the statute.

Summarily stated, the judgment of the Supreme Court of Illinois held that the Plaintiffs, engaged in business as retailers, could not maintain a suit to enjoin administrative employees of the state from obtaining upon mere oral demand, without subpoena or other process, access to their private records; that the customary procedure of using subpoena powers, subject to judicial review, was a mere "formality"; and that with no opportunity for judicial determination of the reasonableness and propriety of the oral demands, the Plaintiffs were subject to criminal prosecution for refusal of those demands.

The jurisdiction of the Supreme Court of the United States to review by direct appeal the judgment entered in this case is conferred by Section 1257(2) of the Judicial Code (62 Stat. 929, 28 U. S. C. 1257(2)).

The following decisions sustain such jurisdiction:

Day-Brite Lighting, Inc. v. *Missouri,* 342 U. S. 421;
Winters v. *New York,* 333 U. S. 507;
Wolfe v. *Colorado,* 338 U. S. 25.

Statute Involved

The statute involved is an act entitled "An act in relationship to minimum fair wage standards for women and minors and providing penalties for the violation thereof.", Illinois Revised Statutes, Chap. 48, Secs. 198.1-198.17.

The pertinent provisions of said Act, hereinafter referred to as "Minimum Wage Act", are as follows:

"§11. As used in this Act:

" 'Department' means the Department of Labor.

* * * * * * *

"§ 3. The Department shall have full power and authority:

* * * * * * *

"2. To enter the place of business or employment of any employer of women and minors in any occupation for the purpose of examining and inspecting any and all books, registers, payrolls, and other records of any employer of women or minors that in any way appertain to or have a bearing upon the question of wages of any such women or minors and for the purpose of ascertaining whether the orders of the Department have been and are being complied with;

* * * * * * *

"§ 14. Every employer of women and minor workers shall keep a true and accurate record of the hours worked by each and the wages paid by him to each and shall furnish to the Department upon demand a sworn statement of the same. Such records shall be open to inspection by the Department at any reasonable time.

* * * * * * *

"§ 15. . . .

"3. Any employer or the officer or agent of any corporation who fails to keep the records required

under this act or to furnish such records to the Department upon request shall be guilty of a misdemeanor and upon conviction be punished by a fine of not less than twenty-five nor more than one hundred dollars, and each day of such failure to keep the records requested under this act or to furnish same to the Department shall constitute a separate offense."

The Issues and the Ruling Below

This is a suit in equity by numerous individuals and corporations engaged in business as retail merchants in the State of Illinois. The complaint is against unwarranted search and seizure and against injury to their persons and property made and done under the purported authority of said Minimum Wage Law, without due process of law and in alleged contravention of certain provisions of the Constitution of the State of Illinois and of the Fourteenth Amendment to the Constitution of the United States.*

The Defendants are certain named individuals being respectively the following named officers of the State of Illinois, The Director of Labor of the Department of Labor, The Attorney General, Director of Finance of the Department of Finance, The Auditor of Public Accounts and the Treasurer.

Judgment is prayed for the Plaintiffs and against the Defendants declaring said Minimum Wage Act to be unconstitutional and void and enjoining the Defendants from incurring any expenses or expending any funds from the treasury of the State of Illinois for the purpose of carrying into effect or administering said Act and from enforcing said Act against the Plaintiffs or any of them and against

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* This statement will refer only to the issues arising under the Constitution of the United States.

any person or corporation similarly situated who may become Plaintiffs in the action.

Among other things, the complaint alleges:

> "The Department of Labor is charged with the administration of the provisions of said purported Act of the Sixty-fourth General Assembly and the Defendant Frank Annunzio as Director of said Department and divers employees of the State of Illinois and the said Department of Labor at his instance and direction or claiming and purporting to act at his instance and direction, have proceeded to administer the provisions of said purported Act in the following respects, namely:
>
> • • • • • • •
>
> "Caused employees of the Department of Labor and of the State of Illinois to call in person upon Plaintiffs Mandel Brothers, Inc. and Chas. A. Stevens & Co. and numerous other persons similarly situated and orally demand of said plaintiffs and other persons similarly situated that the private books, records and papers of said Plaintiffs and others similarly situated be produced for the purpose of being inspected and copied by said employees of the Department of Labor and State of Illinois without there having been issued any warrant or process or any showing made of probable cause for the production of any such private books, records and papers.
>
> • • • • • • •
>
> "The committing and doing of the various acts hereinbefore described in the administration and enforcement of said purported Act • • • have been done and committed wrongfully and without any legal right or warrant in that said purported Act is and each and every of the provisions thereof are unconditional, null and void for the following reasons:
>
> • • • • • • •
>
> "(d) Said Act would deprive persons including Plaintiffs and others similarly situated, of liberty and property without due process of law in violation

of * * * in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

* * * * * * *

"The demands made by Defendants and other persons hereinbefore referred to for the compilation, furnishing and producing of private books, records and papers and data contained therein constitute, and each of them constituted, a violation of law and constituted an attempt by Defendants to violate the rights of Plaintiffs and other persons similarly situated to be secure in their papers and effects against unreasonable searches and seizures contrary * * * the provisions of the Fourteenth Amendment to the Constitution of the United States of America. Plaintiffs and other persons similarly situated have been advised by counsel that the acts herein before described which have been done and committed by the Defendants Frank Annunzio and Ivan A. Elliott and other persons working in conjunction with and under their direction are without lawful authority and in excess of the power and authority vested in them as Director of Labor and Attorney General of the State of Illinois, respectively, and upon such advice Plaintiffs have refused to furnish Defendant Frank Annunzio with the data and information from their private books and records demanded of said Plaintiffs and have refused to comply with the oral demands of said Defendants that their private books, records and papers be produced for the purpose of being inspected and copied by said Defendants and their employees.

"The doing and committing of the acts heretofore done and committed and the doing and committing of further acts which Defendants threaten to do and commit have resulted in and caused, and will further result in and cause, * * * to Plaintiffs and to all other persons similarly situated, irreparable damage and a taking of the property and impairment of the liberties of Plaintiffs and all persons similarly situated contrary to the provisions of * * * the Constitution of the United States of America as hereinbefore set forth.

"Defendant Frank Annunzio and other persons acting or purporting to act at his instance and direction for and on behalf of the Department of Labor, and Defendant Ivan A. Elliott and other persons acting or purporting to act on his behalf as Attorney General of the State of Illinois, purporting to set pursuant to the aforesaid Act of the General Assembly entitled 'An Act in relation to minimum fair wage standards for women and minors and providing penalties for the violation thereof,' have heretofore filed or caused to be filed in a court of record of the State of Illinois two certain informations wherein one Dell M. Anderson on oath, and purporting to act for and on behalf of the Department of Labor, charges in two counts that Plaintiff Mandel Brothers, Inc. and Plaintiff Chas. A. Stevens & Co. did each respectively willfully refuse and fail to furnish to the Department of Labor of the State of Illinois upon two days certain, the books and records of said respective Plaintiffs pertaining to the wages of women or minors allegedly employed by said respective Plaintiffs, and did wilfully refuse to permit inspection of said books and records upon demand therefor in alleged violation of the aforesaid Act of the General Assembly. The filing of said informations constituted an unlawful taking and deprivation of the property and liberties of said Plaintiffs contrary to the aforesaid provisions of * * * the Constitution of the United States of America. Defendant Frank Annunzio and other persons acting or purporting to act at his instance and direction for and on behalf of the Department of Labor, and Defendant Ivan A. Elliott and other persons acting or purporting to act on his behalf as Attorney General of the State of Illinois, have threatened and are continuing to threaten to file similar informations and to prosecute the same against Plaintiffs and other persons similarly situated in violation of the Constitution and laws of * * * the United States of America.

"Plaintiffs and others similarly situated have suffered and will continue to suffer irreparable injury and damage and the deprivation of their property and

> liberties contrary to the Constitution and laws of the State of Illinois and the United States of America and have no means of preventing such injury nor any adequate remedy at law therefor."

The Defendants, without denying any of the allegations of the complaint, moved to have the cause dismissed upon the ground that the complaint showed no ground for the relief prayed for and that the Act under review did not contravene any provision of the Constitution of the United States.

The trial court, the Circuit Court of Sangamon County, overruled the Defendants' motion and made findings including, *inter alia*, a finding that the Act purports to give administrative employees

> "the power to enter the place of business of any employer of women and minors and to examine and inspect the employer's books and records. The delegation of such unlimited power to an administrative officer has been held to be a violation of the constitutional rights of persons and corporations engaged in private business."

The trial court's opinion and findings (appended hereto as Exhibit A) were based upon and quoted from the opinion in the case of *Jones* v. *Securities and Exchange Commission*, 298 U. S. 1.

The Defendants elected to stand on their motion to dismiss and refused to plead further. The complaint was thereupon taken as confessed and a decree was entered ordering that the Defendants be restrained and enjoined from enforcing the Act.

The Defendants appealed to the Supreme Court of Illinois, which court reversed the judgment of the trial court in its entirety, thus holding that the Plaintiffs were subject to criminal prosecution for refusing on advice of counsel

to give access to private records upon mere oral demand by administrative employees.

The opinion of the Supreme Court of Illinois is appended hereto as Exhibit B.

The Question Is Substantial

The question presented by this appeal is whether the Illinois Minimum Wage Act, as construed by the Supreme Court of Illinois, in purporting to authorize employees of the Department of Labor of the State of Illinois to enter the place of business of any person employing women or minors and, upon oral demand, without any warrant or process, or any showing of probable cause, to inspect and to copy from the employer's private books, records and papers, with no guide or restriction upon them except their own conception of what may relate to the subject of wages of women and minors, and in purporting to further authorize the criminal prosecution of any such employer who may refuse to permit such inspection and copying, violates the right secured to such employer by the Fourteenth Amendment to the Constitution of the United States.

The allegations of fact in the complaint, which were admitted by the Defendants' motion to dismiss, and the final decree of the Supreme Court holding the minimum wage law constitutional and dissolving the injunction of the Circuit Court against the prosecution of the plaintiffs, and the construction placed on the Act regarding the right of employees of the Department of Labor to enter upon the premises of an employer, demand, inspect and copy his books, papers and records, squarely raise such issue.

It has long been established that there are reasonable and well defined limits under the Constitution on the authority of Congress to vest in administrative officers and employees powers of investigation, inspection and copying of the private books, records and papers of corporations and

individuals. *Jones* v. *Securities Commission*, 298 U. S. 1, 24; *Federal Trade Commission* v. *American Tobacco Company*, 264 U. S. 298, 305; *Interstate Commerce Commission* v. *Brimson*, 154 U. S. 447, 479.

Nor has Congress, in order to secure a proper administration of the Fair Labor Standards Act, found it necessary to confer on the Federal Wage Administrator any powers of examination and inspection except those to be exercised "under every judicial safeguard, after and only after an order of court made pursuant to and in exact compliance with authority granted by Congress." *Oklahoma Press Publishing Company* v. *Walling*, 327 U. S. 186, 196.

That the issue herein raised is substantial, there can be no doubt. The following language from the opinion of the Court in *Wolf* v. *Colorado*, 338 U. S. 25 (p. 27), makes this plain:

> "The security of one's privacy against arbitrary intrusion by the police—which is at the core of the Fourth Amendment—is basic to a free society. It is therefore implicit in 'the concept of ordered liberty' and as such enforceable against the States through the Due Process Clause. The knock at the door, whether by day or by night, as a prelude to a search, without authority of law but solely on the authority of the police, did not need the commentary of recent history to be condemned as inconsistent with the conception of human rights enshrined in the history and the basic constitutional documents of English-speaking peoples.
>
> "Accordingly, we have no hesitation in saying that were a State affirmatively to sanction such police incursion into privacy it would run counter to the guaranty of the Fourteenth Amendment."

Here we must read "administrative employees" in lieu of "police," but the difference is immaterial; both stand for the majesty of the law and the power of the state. And here, behind the demands of the administrative employee stand

the sanctions of a penal statute which would impose upon the helpless citizen a minimum penalty of $25.00 for each day's delay in meeting demands made upon him should he have the temerity to resist them in order to obtain a judicial determination of whether they were within the law, and it should prove that he was mistaken in his judgment. To subject the orderly determination of one's legal rights to such hazards is a denial of due process of law. *Ex parte Young*, 209 U. S. 123; *Wilcox* v. *Consolidated Gas Co.*, 212 U. S. 19, 53-54; *Missouri Pacific Ry. Co.* v. *Tucker*, 230 U. S. 340; *Oklahoma Operating Co.* v. *Love*, 252 U. S. 331; *Federal Trade Commission* v. *Millers' National Federation, et al.*, 23 F. 2d 968, Cert. Den. 274 U. S. 743.

Only the most wealthy could afford to risk penal proceedings as a means of obtaining a judicial determination of the lawfulness of the demands that might be made upon him.

We believe that the question presented by this appeal is substantial and that it is of public importance.

Respectfully submitted,

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Attorneys for Plaintiffs-Appellees.

EXHIBIT "A"

Motion has been made by defendants to dismiss the complaint. Arguments have been had and briefs submitted by counsel representing plaintiffs and defendants. There are certain constitutional questions which involve certain sections of the Act in question and the Court is now concerned as to whether or not any of the points raised by the plaintiff to the effect that the Act is unconstitutional should be sustained.

The motion to dismiss the complaint will be denied, and the court will make the following findings:

One par. of Section 3 of the Act attempts to give to the Department of Labor the power to enter the place of business of any employer of women and minors and to examine and inspect the employer's books and records. The delegation of such unlimited power to an administrative officer has been held to be a violation of the constitutional rights of persons and corporations engaged in private business. An excellent statement on this subject appears in the case of Jones v. Securities and Exchange Commission, 298 U. S. 1, wherein the Court said on page 24:

> "Arbitrary power and the rule of the Constitution cannot both exist. They are antagonistic and incompatible forces; and one or the other must of necessity perish whenever they are brought into conflict. To borrow the words of Mr. Justice Day—'There is no place in our constitutional system for the exercise of arbitrary power.' Garfield v. United States, 211 U. S. 249, 262, 53 L. Ed. 168, 174, 29 S. Ct. 62. To escape assumptions of such power on the part of the three primary departments of the government is not enough. Our institutions must be kept free from the appropriation of unauthorized power by lesser agencies as well. And if the 'various administrative bureaus and commissions, necessarily called and being called into existence by the increasing complexities of our modern business and political affairs, are permitted gradually to extend their powers by encroachments—even petty encroachments,—upon the fundamental rights, privi-

leges and immunities of the people, we shall in the end, while avoiding the * * * fatal consequences of a supreme autocracy, become submerged by a multitude of minor invasions of personal rights, less destructive but no less violative of constitutional guaranties."

Quoting from the case of Re: Pacific Railroad Commission, 32 Fed. 241, the Court said on Page 27:

"A general, roving, offensive, inquisitorial, compulsory investigation, conducted by a commission without any allegations, upon no fixed principles, and governed by no rules of law, or of evidence, and no restrictions except its own will, or caprice, is unknown to our constitution and laws; and such an inquisition would be destructive of the rights of the citizens, and an intolerable tyranny. Let the power once be established, and there is no knowing where the practice under it would end."

The Court also said on Page 28:

"No one can read these two great opinions (Entick v. Carrington, 19 How. St. Tr. 1030, 1074—followed by this court in Boyd v. United States, 116 U. S. 616, 629, 630) and the opinions in the Pacific R. Commission Case, from which the foregoing quotation is made, without perceiving how closely allied in principle are the three protective rights of the individual—that against compulsory self-accusation, that against unlawful searches and seizures, and that against unlawful inquisitorial investigations. They were among those intolerable abuses of the Star Chamber, which brought that institution to an end at the hands of the Long Parliament in 1640. Even the shortest step in the direction of curtailing one of these rights must be halted *in limine*, lest it serves as a precedent for further advances in the same direction or for wrongful invasions of the others."

See also Federal Trade Commission v. American Tobacco Company, 264 U. S. 298, 304-305; Federal Trade Commission v. Baltimore Grain Co., 284 Fed. 886, affirmed in 267 U. S. 586; Cudahy Packing Com-

pany v. United States, 15 Fed. 2d 133, 136; Cudahy Packing Company v. Holland, 315 U. S. 357, 363.

Section 9 of the Act attempts to give to the Department the power to hear and determine the question as to whether an employer has violated a directory minimum wage order and upon conviction of such violation by the Department to impose a penalty therefor. Under the decision by our Supreme Court in the case of Reid v. Smith, 375 Ill. 147, the provisions of Section 9 violate Article III and Section 1, Article VI of the State Constitution. That case involved the constitutionality of the Act commonly called the Prevailing Wage Act for Public Contracts, which Act attempted to authorize the Department of Public Works and Buildings to impose a penalty for violation of the Act. In discussing that provision the Court said on Page 152:

> "The provision of Section 2 of the Act authorizes forfeitures or penalties to be retained and withheld from the contract price by the awarding body or the Department of Labor and power to render decisions in that regard, confers judicial power upon such bodies contrary to Article III of the constitution. Smith-Hurd Stats. Cleveland, Cincinnati, Chicago & St. Louis Ry. Co. v. *People*, 212 Ill. 638, 72 N. E. 725; People v. Mallary, 195 Ill. 582, 63 N. E. 508, 88 Am. St. Rep. 212. The fact that an appeal is provided from the decision of the awarding body or Department of Labor in so declaring a forfeiture, does not justify one department of government exercising powers belonging to another. People v. Beekman & Co., 347 Ill. 92, 179 N. E. 435; North v. Board of Education, 313 Ill. 422, 145 N. E. 158."

While the penalty to be imposed by the Department under the provisions of Section 9 is different from the usual penalty of fine or imprisonment, nevertheless, it does constitute a penalty which the Department cannot be authorized to impose.

Not only did the Legislature by Section 9 of the Act attempt to vest in the Department of Labor judicial power

contrary to the provisions of the Constitution, but it also attempted to make the decision of the Department on all questions of fact final. Section 13 of the Act provides that 'all questions of fact arising under this Act, except as otherwise herein provided, shall be decided by the Department and there shall be no appeal from its decision on any such question of fact.' Our Supreme Court has held that this is a direct violation of the due process clause of the State Constitution. This section is contrary to the provisions of the Administrative Review Act, which provides for review of all questions of fact and law. In the case of Commerce Commission v. C. C. C. & St. L. Ry. Co., 309 Ill. 165, the Supreme Court said on page 169:

> "Due process of law requires submission to a judicial tribunal for determination upon its own independent judgment as to both law and facts according to the settled rules governing judicial action and decision. While under the police power inherent in the people of the State the legislature has authority to provide for the public safety and welfare it has not undertaken to act directly in the matter of altering grade crossings, but it has delegated to an administrative body power to determine, after a hearing, when the public safety demands that a grade crossing shall be altered. It has further provided that the decision of the administrative body created by it shall be subject to review by the courts, and having provided for this judicial review it cannot select this class of cases and by a special act provide for them a different rule of decision from that which is applicable to other cases."

The foregoing statement of law clearly demonstrates that the limitation contained in Section 13 is unconstitutional.

Before entering any order in this case the Court should have a conference with counsel for all parties.

Respectfully submitted,

DeWitt S. Crow."

EXHIBIT "B"

No. 32640

VISSERING MERCANTILE CO., ET AL., APPELLEES

v.

FRANK ANNUNZIO, DIRECTOR OF LABOR FOR THE DEPARTMENT OF LABOR, ETC., ET AL., ETC., APPELLANT

Appeal from Circuit Court Sangamon County

Mr. JUSTICE BRISTOW delivered the opinion of the court:

The defendants, Director of Labor, Attorney General, Director of Finance, Auditor of Public Accounts, and Treasurer, of the State of Illinois, have appealed from a decree of the circuit court of Sangamon County declaring unconstitutional the act in relation to minimum fair wage standards for women and minors, (Ill. Rev. Stat. 1951, chap. 48, par. 198.1 *et seq.*,) and enjoining its enforcement by defendants, in a proceeding instituted by the plaintiff retail enterprises, individually and as taxpayers.

This direct appeal presents essentially five legal issues for determination: whether the act is a constitutional exercise of the police power; whether section 3, authorizing the Department of Labor to make certain investigations, violates section 6 of article II of the State constitution, relating to unlawful searches and seizures; whether section 9 of the act confers judicial power upon an administrative body in violation of article III and section 1 of article VI of the State constitution; whether section 13 of the act, defining the scope of review of the Department's orders, deprives the court of judicial power, and violates the due-process clauses of the State and Federal constitutions; and whether by reason of the unconstitutionality of any of those provisions the entire act is rendered void.

From the pleadings it appears that plaintiffs, retail merchants similarly situated as members of a class, allege that the Department of Labor, pursuant to the act, which is entitled "An act in relation to minimum fair wage standards for women and minors, and providing penalties for

the violation thereof," has proceeded to make a wage survey for the retail trade, which consists of investigating wages paid to women and minors engaged in certain retail occupations; has demanded in writing that certain plaintiffs furnish information from their private books; has orally demanded from the plaintiffs Mandel Brothers, Inc. and Chas. A. Stevens & Co. the production of their private books without warrant or process, and upon plaintiff's failure to comply therewith, defendants Director of Labor and Attorney General have filed certain informations against plaintiffs, the filing of which, plaintiffs assert, constitutes an unlawful taking of their property contrary to the State and Federal constitutions. Plaintiffs further allege that defendants are about to expend public funds in the enforcement of the act, which expenditures will be illegal because of the unconstitutionality of the act. Plaintiffs and other members of the class similarly situated complain that they have suffered, and will continue to suffer, irreparable injury, for which they have no adequate remedy at law, hence they pray that the act be declared unconstitutional, and that defendants be enjoined from expending funds to administer the act, and from enforcing it against them.

The specific provisions of the act which plaintiffs contend are unconstitutional and render the act void, even if it were otherwise a proper exercise of the police power, are sections 3, 9 and 13.

Under section 3 it is provided in substance that the Department of Labor has power to investigate and ascertain the wages of women and minors in any occupation in the State; to enter the place of business of any employer of women and minors for the purpose of inspecting books, registers, pay rolls and other records that bear on the question of their wages for the purpose of ascertaining whether the orders of the Department have been, and are being, complied with; and to require from the employer statements in writing of the wages paid to all women and minors in his employment.

Under section 9, if the Department has reason to believe that any employer is not complying with any orders under the act, it may summon him to show cause why his name

should not be published as having failed to observe the orders, and, after a hearing and finding of nonobservance, the Department may publish the name of such employer and his failure to observe the wage order in any newspaper in the State.

Section 13 provides, in substance, that there shall be no appeal from a Department decision on any question of fact, but there shall be a review as provided in section 19 of the Workmen's Compensation Act, (Ill. Rev. Stat. 1951, chap. 48, par. 172.54,) from any ruling on a question of law in any decision or order of the Department.

The circuit court found subparagraph 2 of section 3, section 9 and section 13 unconstitutional, and held that the unconstitutionality of section 13 rendered the entire act void. Thereupon the court denied defendants' motion to dismiss the complaint, and entered a decree enjoining the Director of Labor, the Director of Finance, the Auditor of Public Accounts and the Treasurer of the State and their agents from expending any funds for administering the act, and enjoined the defendants and the Attorney General from enforcing the act against plaintiffs.

In determining first whether this act is a constitutional exercise of police power we are cognizant that the criteria of a proper exercise of the police power, that inherent and plenary power of the legislature to protect public health, safety and general welfare, (*City of Chicago* v. *Gunning System*, 214 Ill. 628,) is whether the statute is reasonably designed to remedy the evils which the legislature has determined exist. (*Stewart* v. *Brady*, 300 Ill. 425.) This court has sustained as a proper exercise of that power numerous statutes affecting the labor contract of women and minors. In *People* v. *Elerding*, 254 Ill. 579, an act limiting to ten hours the time women employed in hotels could work was held valid; in *Ritchie & Co.* v. *Wayman*, 244 Ill. 509, a 10-hour day for women employed in any mechanical establishment, laundry or factory was sustained; in *Gill* v. *Boston Store*, 337 Ill. 70, an act limiting the hours of labor of minors under 16 years of age was sustained.

In the act under consideration the legislature has recognized that oppressive wages—wages which are both less than the fair and reasonable value of the services rendered,

and less than sufficient to meet the minimum cost of living necessary for health—constitute an evil jeopardizing the health and welfare of women and minors, who do not have equal bargaining power for wages with men. To remedy that evil the legislature has established a system whereby employers of women and minors may be required to pay fair wages, which are commensurate with the value of the services rendered.

This particular evil has been recognized as a proper subject for the exercise of the police power by numerous State legislatures, which have enacted statutes with varying terms and provisions regulating the wages paid to women and minors. Some statutes were recommendatory, as in Massachusetts; other, compulsory, as in Oregon; and of the compulsory category, some acts established a legislative standard based on the cost of living to maintain women and minors in good health, others embodied the standard of the value of the services rendered; some prescribed a fixed wage; and still others allowed a commission to determine wages. 5 Geo. Wash. L. Rev. 865; 22 Ia. L. Rev. 565; 37 Harv. L. Rev. 545.

The first test of the constitutionality of these wage fixing statutes came in 1917 in *Stettler* v. *O'Hara*, 213 U. S. 629, when the Supreme Court of the United States in a 4-4 decision, from which Justice Brandeis abstained because of previous interest, affirmed the decision of the Oregon Supreme Court, and upheld a minimum wage statute for women and minors based upon the cost of living. Thereafter, the State courts, reassured by the attitude of the highest court of the nation, affirmed the validity of their own statutes, and between 1917 and 1923 minimum wage laws for women were upheld in Arkansas, (*State* v. *Crowe*, 130 Ark. 272, 197 S. W. 4,) Minnesota, (*Williams* v. *Evans*, 139 Minn. 32, 165 N. W. 495,) and Washington, (*Larson* v. *Rice*, 100 Wash. 642, 171 Pac. 1037.)

In 1923, however, the Supreme Court of the United States, in *Adkins* v. *Children's Hospital*, 261 U. S. 525, held unconstitutional a minimum wage law passed by Congress in the exercise of its plenary power over the District of Columbia for the benefit of women and minors based upon a standard of the cost of living to maintain them in good health and

morals. Justice Sutherland rendered the majority opinion, to which Justices Taft and Holmes filed separate dissents. Inasmuch as the rationale of the majority opinion embodies some of the arguments advanced by the petitioners herein, and since that rationale was subsequently overruled by the court, as will presently appear, it is material to note the arguments set forth.

Justice Sutherland states, in substance, that, although there is no such thing as absolute freedom of contract, yet freedom is the rule and restraint the exception, justified only by exceptional circumstances. Whether such circumstances were present in that case could be determined only by analogy to those interferences with liberty to contract which had previously been upheld. Those include statutes fixing rates and charges exacted by businesses impressed with public interest; statutes relating to the performance of public work contracts; statutes prescribing the character, methods and time for payment of wages; and those fixing the hours of labor. Minimum wage legislation, while analogous to the last group, was deemed distinguishable, since the amount of wages is the heart of the contract, whereas the regulation of hours leaves "the heart untouched and tends to preserve the essential liberty of the contracting parties," so that affirmation of the hour regulations would not necessitate upholding minimum wage legislation.

The court also stated that the selection of women employees as a special class was arbitrary since the revolutionary changes in the contractual, political and civil status of women had put them on an equal level with men. Moreover, the law could not be deemed a valid exercise of the police power because it is impossible to fix minimum wages which can apply with even justice to all women; it cannot be shown that well paid women safeguard their morals any more than poorly paid women; and the declared basis of the statute is a living wage to the employee, overlooking the moral requirement that the amount paid should be the just equivalent of the services rendered.

The dissenting opinion of Justice Taft noted that the court was not called upon to expose its socio-economic views, and that it could not logically sustain maximum hour

regulations and at the same time invalidate minimum wage legislation.

In his dissenting opinion Justice Holmes stated: "I confess that I do not understand the principle upon which the power to fix a minimum for the wages of women can be denied by those who admit the power to fix a maximum for their hours of work. The bargain is equally affected whichever half you regulate."

The majority opinion in that case was interpreted to deny only the legislative power to enact wage legislation measured by the cost of living. That interpretation was predicated upon Justice Sutherland's statement: "The feature of this statute which perhaps more than any other puts on it a stamp of invalidity is the fact that it exacts from the employer an arbitrary payment for a purpose and a basis having no causal connection with his business or the work the employer engages to do. The basis is not the value of the services rendered, but the extraneous circumstances that the employee needs to get a prescribed sum."

To conform with the implication in that statement, the Illinois statute, as well as those of other States, was drafted to define a "fair wage" as one "fairly and reasonably commensurate with the value of the services or class of service rendered."

During the ensuing years measures designed to promote health and safety were sustained by the Supreme Court, which steadily subordinated liberty of contract to protective legislation. (37 Harv. L. Rev. 535; Hamilton, Freedom of Contract, VI Soc. Sci. Ency. 450.) This trend culminated in the Supreme Court's unequivocal reversal of the *Adkins case* in *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379, where the majority opinion, delivered by Justice Hughes, held valid a Washington statute based upon a wage sufficient to maintain women in health.

While Justice Hughes did not minimize the health objectives of the statute, nevertheless, in specifying as another cogent ground for the decision the correction of the economic ills through the exercise of the police power, he suggested an additional constitutional justification for regulative measures. The court stated: "There is an additional

and compelling consideration which recent experience has brought into a strong light. The exploitation of a class of workers who are in an unequal position with respect to bargaining power and are relatively defenseless against the denial of a living wage, is not only detrimental to their health and well being, but casts a direct burden for their support on the community. We may take judicial notice of the unparalleled demand for relief which arose during the period of the depression. * * * The community is not bound to provide what is in effect a subsidy for unconscionable employers, but may direct its law-making power to correct the abuse which springs from their selfish disregard of the public interest."

Thus, the court subordinated the concept of liberty of contract to the police power of the legislature to protect the health of women and minors, and to remedy an unjust economic burden imposed upon the community. After that decision the constitutionality of minimum wage legislation for women, predicated not only upon the wage necessary to sustain women in health, but on the cost of living and on the fair value of services rendered, was upheld by numerous courts. *In re Fisher,* 344 Pa. 96, 23 Atl. 2d 878; *Young* v. *Willis,* 305 Ky. 200, 203 S. W. 2d 5; *Associated Industries of Oklahoma* v. *Industrial Welfare Com.,* 185 Okla. 177, 90 Pac. 2d 899; *California Drive-in-Restaurant Assn.* v. *Clark,* 22 Cal. 2d 287, 140 Pac. 2d 657; *People on Information of Siegel* v. *Weingrad,* 26 N. Y. S. 2d 841.

In the *Siegel case* the court held that although the present New York minimum wage law for women and minors was substantially the same as that held unconstitutional, (*Morehead* v. *New York ex rel. Tipaldo,* 298 U. S. 587, 56 S. Ct. 918,) nevertheless, since the Supreme Court in the *Parrish case* expressly overruled the authority on which the *Tipaldo case* was based, the present statute may now be deemed constitutional.

We are cognizant that these State court decisions are of limited value as precedent in construing the Illinois Constitution (*People* v. *Stevenson,* 281 Ill. 17, 25) even though they involve statutes with the same purport and essentially the same standards. However, as hereinbefore noted, the

Illinois courts have sustained, as reasonable exercises of the police power, legislation affecting the hours of labor of women and minors, and, as stated by Justice Holmes, the bargain is equally affected, whichever half (wages or hours) you regulate. Moreover, it is our judgment in the light of the *Parrish case*, and the approach of the Supreme Court of the United States therein, that the Illinois Minimum Wage Act may be determined to be a reasonable exercise of the police power. The standards prescribed in the act in defining "Oppressive Wages" and Fair Wages" are designed to eliminate starvation wages for women and minors, and to equalize their bargaining power, and would therefore tend to protect their health and welfare. These health and welfare objectives of the act are not destroyed or minimized, as plaintiffs suggest, merely because the legislature at the same time endeavored to effect that minimum wage in a manner which would also be fair to employers, by providing that the wages be related to the services rendered. That standard, furthermore, would even satisfy the more conservative approach of the court in the *Adkins case*, wherein the unconstitutionality of the wage statute was predicated largely on the ground that the wage was not related to the value of the services.

Although we have sustained herein the constitutionality of the objectives of this act, it is established that the means of administration and enforcement must also conform to the limitations imposed by the Federal and State constitutions.

Plaintiffs contend that section 3 of the act, which authorizes the Department and its agents to enter any place of business employing women and minors and to inspect all books, registers, pay rolls and other records bearing upon the wages of women and minors in order to ascertain whether the orders of the Department are being complied with, violates section 6 of article II of the Illinois constitution, relating to unlawful searches and seizures, and the fourteenth amendment to the Federal constitution.

In support of the constitutionality of the provision defendants have cited valid Illinois statutes providing for similar investigations into the business affairs of building

and loan associations, (chap. 32, par. 240) insurance companies, (chap. 73, pars. 744, 1014, 1020) and banks, (chap. 16½, par. 8). Plaintiffs, however, urge that these statutes are distinguishable since they relate to employments affected with a public interest, and consequently may be subject to regulation, whereas section 3 of the Minimum Wage Act applies to all occupations employing women and minors.

This distinction is too tenuous. The cited statutes are regulatory measures enacted pursuant to the police power of the State; similarly, the Minimum Wage Act is also being sustained herein as a valid exercise of the police power, enacted to protect the health and welfare of women and minors. In all of these statutes the power of investigation is authorized to implement and effectuate the objectives of the particular law. Inasmuch as all of them are police measures, there can be no cogent legal grounds for distinguishing only the investigative power provided in the Minimum Wage Act, which power is no broader than that provided in the other statutes. Hence those valid statutes cited by defendants may properly be regarded as precedent for sustaining the validity of section 3 of the act.

In further support of the validity of this section defendants argue that comparable provisions in the Federal Fair Labor Standards Act (29 U. S. C. A. secs. 209, 211a) have been held constitutional. The Supreme Court of the United States in *Oklahoma Press Publishing Co.* v. *Walling*, 327 U. S. 186, 66 S. Ct. 494, sustained the constitutionality of the provisions in the Federal act whereby the Administrator is authorized to investigate and gather data regarding wages and other conditions and practices of employment, and to enter and inspect such places and records as may be necessary to determine whether there has been a violation of the act or which might aid in the enforcement of its provisions.

In the *Walling case the* court reviewed the decisions relating to the scope of the government's power to investigate private enterprise and noted that a compromise had been worked out in a manner to secure the public interest, and at the same time to guard the private ones against only abuses from which protection rightfully may be

claimed. The court endeavored to propound the broad confines of the investigative power within the limitations of the search and seizure prohibition of the Federal constitution, and stated: "It is enough that the investigation be for a lawfully authorized purpose within the power of Congress to command * * * and the documents sought are relevant to the inquiry. Beyond this the requirement of reasonableness, including particularity in 'describing the place to be searched and the person or things to be seized,' * * * comes down to specification of the documents to be produced, adequate, but not excessive for the purposes of the relevant inquiry."

It is evident that section 3 comes within those broad limitations. The investigation authorized is for a lawful purpose, *i. e.*, to effectuate a minimum wage law for women and minors validly enacted under the police power; and the requirements of reasonableness are met since the section authorizes only investigation of books and records which bear on the question of wages of women and minors, so that any investigating official must limit his inquiry to those issues, and may demand only documents relevant thereto.

Plaintiffs, however, have endeavored to distinguish between the investigative powers sustained by the Supreme Court, and those prescribed in section 3, on the ground that the Federal Act requires a *subpoena* in order to render the investigation compulsory. (*Cudahy Packing Co.* v. *Holland*, 315 U. S. 357, 62 S. Ct. 651.) In operation, the *subpoena* requirement would be a formality, since if any record or information bore on the question of wages of women or minors, it could ultimately be demanded and secured by the Department even if a *subpoena* were required. Whereas, if the document or inquiry were not relevant to the statutory purpose, the government could not constitutionally secure the document or information even if the statute required a *subpoena*. It is the nature of the investigation authorized by the statute, not the formalities attending its exercise, which is determinative. With the exception of the formality of the *subpoena*, the nature of the investigative power authorized under the Federal act is precisely the same as that provided under section 3.

The Federal act was sustained in the *Walling case,* not because of the *subpoena* requirement, but because the scope of the investigation was limited to relevant inquiry, reasonably related to a valid statute, and such investigation was essential to effectuate that statute. Hence, section 3 cannot be held to offend the search and seizure prohibitions of either the Federal or State constitutions.

Plaintiffs further contend that section 9 of the act, which authorizes the Department, after a hearing and findings of nonobservance of an order, to publish in any newspaper in the State the names of any employers failing to observe the order, confers judicial power on the Department of Labor in violation of article III and section 1 of article VI of the Illinois constitution. The constitutional doctrine of separation of powers is set forth in article III, and the judicial power of the State is vested in the courts under section 1 of article VI. Plaintiffs argue that the publication provided in section 9 is tantamount to the imposition of a penalty for an alleged infraction of the law, without a judicial determination of the merits of the cause, and consequently confers a judicial function upon an administrative agency.

In support of this interpretation, plaintiffs cite *Reid* v. *Smith,* 375 Ill. 147, where the court held that a statute attempting to establish a prevailing wage standard for public contracts and authorizing forfeitures or penalties to be retained by the body awarding the contract was unconstitutional on the ground that the forfeiture provisions conferred judicial power upon an administrative agency contrary to article III of the Illinois constitution. Plaintiffs argue that the difference between the monetary penalties prescribed in that statute, and the publication specified herein, which would ultimately inflict financial loss, is not material.

We cannot agree with that contention. The basic tenet of the *Reid case* is that an administrative body may not usurp the judicial function by imposing a penalty. However, under section 9 of the act the tribunal, by permitting or authorizing publication of the nonobservance of an order, is not imposing a penalty, since that information would be public knowledge and could be printed in any newspaper

rrespective of the consent or authorization of the adminis-rative agency. The financial loss which might ensue from he publicity is inflicted, not by the administrative agency, s in the *Reid case*, but by the public, which might abstain rom purchasing from the offending company, just as the ublic would do in response to any other undesirable pub-city. This possibility that the public reaction might cause nancial loss does not convert section 9 into a penalty pro-ision, nor can it be construed as conferring judicial power n an administrative body. Hence no constitutional doc-rines are infringed. It may be noted further that the ublication authorized in section 9 is not novel in Illinois tatutory law, for similar publication of the result of admin-trative investigation of building and loan associations is uthorized whenever the Auditor of Public Accounts shall eem it for the best interests of the public. (chap. 32, ar. 240.)

Plaintiffs also challenge the constitutionality of section 3 of the act which relates to judicial review, on the ground hat it permits review of only questions of law, and thereby eprives the courts of judicial power in violation of sec-on 1 of Article VI, and deprives individuals of due process f law under the guarantees of the State and Federal con-itutions.

Section 13 provides that all questions of fact arising nder the act shall be decided by the Department and that here shall be no appeal therefrom. Review of questions f law is authorized as under section 19 of the Workmen's ompensation Act. Although that section of the Work-nen's Compensation Act authorizes a review by *certiorari* f both questions of fact and law, since section 13 permits he *certiorari* procedure to be utilized only with respect to uestions of law, we must adjudge the constitutionality of his limited scope of review.

We are cognizant of the established distinction in the ase law between the constitutional requirements for re-iew from administrative bodies which are legislative in haracter and those which perform semijudicial or *quasi*-udicial functions. (*People ex rel. Radium Dial Co.* v. *Lyan*, 371 Ill. 597; *Nega* v. *Chicago Railways Co.*, 317 Ill. 82; *Ohio Valley Water Co.* v. *Ben Avon Borough*, 253 U. S.

287.) In the *Nega case* the court exhaustively analyzed the cases involving the constitutionality of provisions limiting judicial review to questions of law. In its rationale the court recognized that due process of law requires judicial review of questions of fact where the acts and orders of the administrative body are legislative in character, but not where they are judicial in character. The court held therein that since the function of the Industrial Commission partook of the nature of a judicial proceeding, and its functions were judicial rather than legislative, the legislature had power to limit judicial review to questions of law; hence, the review provisions therein did not violate the due process clause of the Federal constitution. Where, however, the acts of the tribunal are legislative in character, as rate making, it has been held that to deny the courts the right to review the facts and action of the tribunal would constitute a violation of the due-process clause. *Commerce Com. ex rel. Lumaghi Coal Co.* v. *Chicago and Eastern Illinois Railway Co.*, 332 Ill. 243; *Commerce Com. ex rel. City of Bloomington* v. *Cleveland, Cincinnati, Chicago and St. Louis Railway Co.*, 309 Ill. 165.

The acts of the Department of Labor pursuant to the minimum wage act in controversy, in establishing minimum fair wages and in establishing or modifying the regulations to implement such wage rates, are essentially legislative in character rather than judicial. The functions are comparable to the rate making functions of the Commerce Commission, hence section 13, which prescribes the exclusive mode of review of decisions under the act, and which denies any judicial review of questions of fact, violates the due-process clauses of the State and Federal constitutions, and deprives the court of their proper judicial power.

Although we have sustained plaintiffs' contention with reference to the unconstitutionality of section 13 of the act, we cannot accept plaintiffs' construction, which was sustained by the circuit court, that the unconstitutionality of that section would render the entire act unconstitutional.

The cases reiterate the rule that the invalidity of one section of a law does not affect the validity of the remainder unless it appears that the legislature would not have enacted

the law without including the invalid portion. (*McDougall* v. *Lueder*, 389 Ill. 141.) The legislative intent to enact the statute irrespective of the unconstitutionality of any particular provision is manifest in section 17 of the act, which provides, "If any provision of this act or the application thereof to any person or circumstance, is held invalid the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby."

Furthermore, the provision which we have held invalid is not so integrated in the act as to render the act incapable of being executed. The basic system for the establishment and enforcement of minimum wages for women and minors set forth in the statute is capable of operation even though the mode of judicial review may be held insufficient to satisfy the constitutional requirements for due process of law. Under these circumstances the unconstitutionality of section 13 cannot invalidate the entire act, and the decree of the circuit court declaring the statute unconstitutional and enjoining defendants from administering or enforcing it should properly be reversed.

Decree reversed.

APRIL 26, 1954.*

Decisions Per Curiam.

No. 644. VISSERING MERCANTILE CO. ET AL. *v.* ANNUNZIO, DIRECTOR OF LABOR, ET AL. Appeal from the Supreme Court of Illinois. *Per Curiam:* The appeal is dismissed for the want of a substantial federal question. *Preston C. King, Jr.* and *Preston B. Kavanagh* for appellants. Reported below: 1 Ill. 2d 108, 115 N. E. 2d 306.